

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BENTHOS MASTER FUND, LTD.,

Petitioner,

-against-

AARON ETRA,

Respondent.

20-CV-3384 (VEC)

ORDER

VALERIE CAPRONI, United States District Judge:

WHEREAS on December 20, 2022, the Court ordered a forensic examination of Etra's cell phone and laptop, *see* Order, Dkt. 263;

WHEREAS on September 28, 2023, the Court entered a Forensic Protocol to govern the examination of those devices, *see* Order, Dkt. 383;

WHEREAS the Forensic Protocol provided that the Forensic Expert will create a Content Report of the documents contained on Mr. Etra's devices and provide that report to Etra for him to review it for possible privileged documents, *id.* ¶ 6;

WHEREAS the Forensic Protocol also provided that the Court would hold a status conference to discuss the timeline for Etra to assert any claim of privilege over any particular contents on his devices, *id.* ¶ 6(a);

WHEREAS the number of documents on Etra's devices was voluminous and Etra indicated difficulty in reviewing the Content Report, *see* Dkts. 397, 398;

WHEREAS the Court ordered Benthos to prepare a plan to reduce the number of documents to review, *see* Dkt. 403;

WHEREAS Benthos filed a letter containing a plan that removed photos from the review, segmented the review of emails by unique sender or recipient email address, segmented the

review of documents by folder and proposed proceeding first with just the material contained on Mr. Etra's laptop, see Dkt. 404;

WHEREAS the Court ordered the parties to be prepared to discuss the plan and a timeline for asserting privilege, see Dkt. 403; and

WHEREAS on November 16, 2023, the parties appeared for the status conference (the "Conference");

IT IS HEREBY ORDERED that all emails associated with any .gov address, except for that associated with Amy Gallicchio, must be produced to Benthos because the Court holds that, for the reasons stated at the Conference, there is no basis for any good faith assertion of privilege over emails to or from government accounts.

IT IS FURTHER ORDERED that the files contained in folders with the following names be produced to Benthos because the Court holds that, for the reasons stated at the Conference, there is no basis for any good faith assertion of privilege over files in these folders:

1. \Users\aaronetra\Documents\ BLANK FORMS
2. \Users\aaronetra\Documents\ILSC
3. \Users\aaronetra\Documents\ILSC\2019-2020 Strategic Plan
4. \Users\aaronetra\Documents\ILSC\ILSC RFPs
5. \Users\aaronetra\Documents\PERSONAL
6. \Users\aaronetra\Documents\UN2020
7. \Users\aaronetra\Documents\Z - OLD GOOGLE DRIVE FILES\IMEX – America's Worldwide Exhibition for incentive travel, meetings and events..._files
8. \Users\aaronetra\Documents\Z - OLD GOOGLE DRIVE FILES\Re DONE DEAL AARON ETRA 17OCT TO VEGAS RETURN 19OCT e ticket receipt_files
9. \Users\aaronetra\Documents\Z - OLD GOOGLE DRIVE FILES\Registration _ IQ Elite_files
10. \Users\aaronetra\Documents\Z - OLD GOOGLE DRIVE FILES\TAXES
11. \Users\aaronetra\Documents\Z - OLD GOOGLE DRIVE FILES\Teva® Official Site _ Checkout_files
12. \Users\aaronetra\Documents\Z - OLD GOOGLE DRIVE FILES\UNITED ETICKET RECEIPT 12 MAY TO

IT IS FURTHER ORDERED that all documents produced to Benthos are subject to clawback for privilege, such that any privileged document produced as a result of this order will not result in the waiver of any privilege associated with such document; if Benthos obtains any document that appears to be privileged or possibly privileged, Benthos must immediately segregate that document, refrain from any further examination or disclosure of such document, and immediately notify the Court and Etra. The Court will, at that time, order the next steps that Benthos must take.

IT IS FURTHER ORDERED that, upon reviewing documents in the folder labeled “TAXES,” if any of the documents relate to the taxes of anyone other than Etra, Benthos must immediately segregate such documents, refrain from any further examination or disclosure of such documents, and immediately notify the Court and Etra.

IT IS FURTHER ORDERED that no later than **Thursday, November 30, 2023**, Etra must file a letter, under penalty of perjury, stating whether he asserts that emails sent to or received from the following nine email accounts are or may be privileged: (1) tracieevans@gmail.com, (2) helmutallesch@gmx.de, (3) helmut@allesch.at, (4) office@allesch.at, (5) mel@dusselgroup.com, (6) service@paypal.com, (7) help@tryairwallet.com, (8) giorgio@reignfi.com, and (9) paulsimms2@aol.com. If Etra asserts that such emails are or may be subject to the attorney-client privilege, he must provide the legal and factual basis for that assertion. At a minimum, the factual basis for the assertion must include the name and address of the person or entity associated with the email account with which he contends he formerly maintained an attorney-client relationship, the approximate dates of the attorney-client relationship and a general description of the nature of the representation.

IT IS FURTHER ORDERED that Benthos must respond to Etra's November 30, 2023, privilege assertions **no later than 10 days after Etra files them**, and Etra must reply to Benthos' response **no later than 7 days after Benthos files it**.

IT IS FURTHER ORDERED that, if Etra does not file privilege assertions related to the nine email addresses listed above by November 30, 2023, the Court will order production to Benthos of all emails sent to or from those addresses.

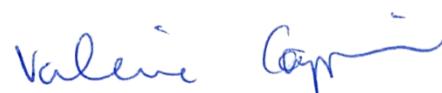
IT IS FURTHER ORDERED that the deadline for Etra to file a letter, under penalty of perjury, stating whether he asserts that (1) emails to or from the balance of the email addresses listed in Exhibit A to Benthos' Letter, Dkt. 404-1 (i.e., the addresses not listed above and those that do not end in .gov), and (2) files contained in the balance of the folders listed in Exhibit B to Benthos' Letter, Dkt. 404-2, are or may be privileged is **Tuesday, January 2, 2024**. As with the letter due November 30, 2023, any assertion that the communications associated with a particular email address or file folder are or may be privileged must be accompanied with the legal and factual basis for that assertion. The factual basis, at a minimum, must include the name and address of the person or entity associated with the relevant email account or file folder with which he contends he formerly maintained an attorney-client relationship, the approximate dates of the attorney-client relationship, and a general description of the nature of the representation.

IT IS FURTHER ORDERED that, if Etra does not file privilege assertions by Tuesday, January 2, 2024, the Court will order production to Benthos of all documents on Etra's laptop.

IT IS FURTHER ORDERED that the Clerk of Court is respectfully directed to mail a copy of this Order to Etra, Reg. No. 36170-510, MDC-Brooklyn, P.O. Box 329002, Brooklyn, NY 11232, and to note the mailing on the public docket.

SO ORDERED.

Date: November 16, 2023
New York, New York



VALERIE CAPRONI
United States District Judge